



Montoya, Darlene <dmontoya@nmag.gov>

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## Request for Policies Related to Officer-Involved Shootings and Other Use of Force Incidents

3 messages

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**Charles Cunningham** <ccunningham@hobbsnm.org>  
To: "dmontoya@nmag.gov" <dmontoya@nmag.gov>

Mon, Jan 23, 2017 at 4:04 PM

Ms. Montoya,

Pursuant to your request, I am submitting policies of the Hobbs Police Department as they pertain to force related and officer involved fatal incident protocol. The policies are attached and are PDF documents. Please let me know if you have any questions. Thanks a lot and take care.

**Captain Charles Cunningham**

**Support Services Division**

**Hobbs Police Department**

**300 N. Turner**

**Hobbs, NM 88240**

**(575) 397-9258**

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### 2 attachments



**Chapter 2 Section 22 Ofc Inv Fatal Accidents.pdf**

137K



**Chapter 2 Section 21 Use of Force.pdf**

123K

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**Montoya, Darlene** <dmontoya@nmag.gov>  
To: Charles Cunningham <ccunningham@hobbsnm.org>

Mon, Jan 23, 2017 at 4:43 PM

Captain Cunningham:

Per the correspondence the LEAB Subcommittee would also like to know when the last time these policies were reviewed and/or revised, and how often your staff receives training on these policies. Please let me know and I will print it out and attach to the policies.

Thank you.

[Quoted text hidden]

—  
Darlene Montoya, Administrator

New Mexico Attorney General's Office  
408 Galisteo Street  
Santa Fe, New Mexico 87501  
[\(505\) 490-4854](tel:5054904854)

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**Charles Cunningham** <[ccunningham@hobbsnm.org](mailto:ccunningham@hobbsnm.org)>  
To: "Montoya, Darlene" <[dmontoya@nmag.gov](mailto:dmontoya@nmag.gov)>

Tue, Jan 24, 2017 at 8:14 AM

All commissioned and certified personnel training on use of force, defensive tactics, taser, less lethal on a monthly basis. We also conduct annual more formal trainings on each one also. The revision/amended date of the policies is in the upper right hand corner of each page of the policies.

**From:** Montoya, Darlene [mailto:[dmontoya@nmag.gov](mailto:dmontoya@nmag.gov)]

**Sent:** Monday, January 23, 2017 4:43 PM

**To:** Charles Cunningham

**Subject:** Re: Request for Policies Related to Officer-Involved Shootings and Other Use of Force Incidents

[Quoted text hidden]

**I. STATEMENT OF PURPOSE**

The use of force by a police officer is an extremely sensitive issue and requires careful study and understanding by every officer. This is especially true since the definitions of the use of force by police are based on the determination of reasonableness under the circumstances. Although the careful use of force is authorized by law, the use of unnecessary or unreasonable force is strictly prohibited and will not be tolerated.

While clear boundaries of reasonableness can be defined for certain police situations, others must be interpreted for the particular set of circumstances involved. The purpose of this section is to provide each officer with policy guidance and direction with respect to the use of force in carrying out their duties.

**II. DEFINITIONS**

- A. Use of Force - A use of force is an action that causes tissue damage or has the potential to cause tissue damage and the action cannot be recalled. It does not matter whether it hit or missed its intended target.
- B. Show of Force - An action that has no potential to cause tissue damage and it is an action that can be recalled.
- C. Deadly Force - Force that is intended or known by the person using the force to cause, or in the manner of its use or its intended use, is capable of causing death or serious bodily injury.
- D. Serious Bodily Injury - Injury that creates a substantial risk of death, serious permanent disfigurement, or protracted loss or impairment of a bodily member or organ.
- E. Objective Reasonableness - The actions of an officer's use of force must be judged from the perspective of a reasonable officer when confronted with the same circumstances.
- F. Reasonable Force - Use of the minimum amount of force needed to achieve control over an incident or person.

**III. GENERAL POLICY**

- A. Reasonable force may be used by an officer in the performance of duties, when:
  - 1. Necessary to preserve the peace, to prevent the commission of an offense or to prevent suicide or self-inflicted injury.
  - 2. Making lawful arrests and searches, overcoming resistance to such arrests and searches, and preventing escapes from custody.
  - 3. In self-defense or defense of another against unlawful violence to a person or property.
  - 4. Preventing or interrupting an intrusion on or interference with the lawful possession of property.

- B. An officer may use reasonable force to overcome resistance to the lawful performance of duties.
- C. Before the application of reasonable force, officers should identify themselves and state their purpose to the offender and others present. This identification is not necessary if the officer reasonably believes his purpose and identity are already known or conditions exist which render it unfeasible to identify.
- D. There is no specific rule fitting all cases as to how much force and means may be used, each case must be decided in the light of its own specific, articulable facts. Under no circumstances will the force used be greater than necessary and in no instance will deadly force be used except as stated in the Deadly Force section of this chapter.
- E. The Reactive Control Model (RCM) will be taught by the department's use of force instructors and will be expected to be used by officers of this department to guide them in determining the appropriate course of action when interacting with a person(s) in a situation which may require the use of force. No policy can anticipate every situation an officer may face. Use of physical force, show of force, or deployment of defensive weapons must be reasonable under the totality of the circumstances.
- F. Officers will use only the force necessary to accomplish lawful objectives. This is based upon the reasonableness of the force and totality of the circumstances as well as the subject's behavioral and criminal activity cues which should guide the officer's actions as described in the RCM. Use of force is often dynamic and ever changing so the RCM will act as a guide as it cannot cover every instance of all use of force applications. However, officers should consider whether the force is reasonable, given the totality of the circumstances, as their primary guide and the RCM as to their application of force. Officers should attempt to de-escalate a potential use of force situation when circumstances safely allow the officer to do so by employing tactical communication techniques. Some of the customary force options are listed below. However, an officer is not limited to these options in emergency circumstances.
  - 1. Defensive Techniques;
  - 2. Department issued Chemical Spray;
  - 3. Conducted Electrical Weapon
  - 4. Department issued ASP baton;
  - 5. Department issued or approved firearm and ammunition.
- G. When faced with a life or death situation, officers may use any available means for preservation of life.

#### **IV. REPORTING PROCEDURES - USE of FORCE INCIDENT**

- A. In any incident where force is used, officer(s) shall document the incident on the Uniform Incident Report and mark the Use of Force check box accordingly (used; shown; none). Any on-scene recordings of the incident will be submitted into evidence. The report will include a detailed description of the following:
  - 1. Event leading to the necessity for the use of force;
  - 2. Detail of any de-escalation techniques;
  - 3. The amount and type of force used;



4. The nature and extent of injuries, if any, and treatment rendered; and,
  5. Identity of individuals involved and other pertinent information.
- B. Each Use of Force incident will also be reported on the Use of Force supplement form. All applicable information will be indicated on the form.
- C. All officers are required to complete a **Use of Force supplement form** under the following conditions:
1. Any Use of Force where there has been tissue damage or the potential of tissue damage (i.e., a swing and miss with the ASP baton).
  2. When any type of force as described in subsection (5) is used against an individual by an officer acting under color of law;
  3. When a firearm is discharged by an officer, except at the firing range or destroying an animal;
  4. The application of arm and leg restraints (four point restraint) in a jail setting being classified as a use of force is dependent upon the degree of resistance put forth by the detainee and the actions of the employee to overcome that resistance. These incidents should be considered on a case-by-case basis. If the incident is determined not to be a use of force, it will be documented in detail in the Jail Daily Log Book. Otherwise, Use of Force reporting procedures will be followed as described herein.
  5. Types of force include, but not limited to:
    - a. Joint locks
    - b. Mechanical restraints (when used for control)
    - c. Nerve pressure points
    - d. Chokes or choke holds
    - e. Take downs or throws including tackles
    - f. Striking weapons
    - g. Kicks or strikes with open or closed hands or with tools or implements of the trade (e.g., flashlights, metal clipboards, etc.)
    - h. Chemical weapons
    - i. Conducted Electrical Weapon
  6. The exception to this is when the only force used was a firm grip used to escort a person and/or the use of handcuffs.
    - a. Officers who have applied handcuffs to a citizen shall maintain physical contact

and control of that citizen to provide for their safety while they are handcuffed.

7. Medical Aid to Injured Parties

- a. When a person is injured because of an officer's use of force, the officer shall notify his immediate supervisor and seek medical treatment for the injured person. This call for medical attention shall be documented in the associated reports.

b.

- D. Employees who become involved in a use of force incident shall contact the on-duty supervisor as soon as is safe to do so to report the use of force incident.

**V. SUPERVISOR RESPONSIBILITIES - USE of FORCE**

- A. In any incident where force is used, the on-duty supervisor will be required to conduct a preliminary review of the incident and complete the *Supervisor Use of Force Review* form. The Supervisor Use of Force review will include the following:
  1. Photographs of any injury, or lack thereof, will be taken of the subject (*not required if the only action was a Show of Force*);
  2. A recorded statement will be taken from the subject (*if subject refuses or is medically unable, this must be documented. A recorded statement is not required if the only action was a Show of Force*);
  3. Any civilian witnesses will be documented and a recorded statement will be obtained from them, if at all possible (*not required if the only action was a Show of Force*);
  4. Assurance that any available on-scene recordings were logged into evidence (***required for all use of force and show of force incidents***); and
  5. Copies of the *Supervisor Use of Force Review* form, incident reports, photos, recorded statements, and any other attachments will be forwarded to the Lieutenants, Captain and ultimately to the Deputy Chief. The Deputy Chief will submit the completed packet to the Office of Professional Standards for tracking purposes.
- B. If the supervisor is involved in the use of force incident, another supervisor will be required to conduct the Supervisor Use of Force review. If no other supervisor is reasonably available, a senior officer may conduct the use of force review. Any reports generated by a supervisor detailing their personal actions in an incident shall be submitted for approval to their immediate supervisor.
- C. Supervisors are authorized to conduct any follow-up procedure they deem necessary to reach a conclusion regarding the validity of the Use of Force. Supervisors shall report any possible violation of the Use of Force policy to their chain of command.

**VI. REPORTING PROCEDURES - SHOW OF FORCE**

- A. In an attempt to de-escalate a potential use of force incident, officers are authorized to show force by pointing any issued defensive weapon at a subject whose behavior could result in a use of force

action. This policy will be followed when an officer points any firearm at a citizen; when an officer points chemical spray at a citizen; when an officer displays the ASP baton by loading it toward a citizen; when an officer points a Conducted Electrical Weapon at a citizen.

- B. The pointing of any defensive weapon at a person must be reasonable under the circumstances and within Departmental training. The indiscriminate pointing of weapons at citizens without cause is strictly prohibited.
- C. In the event an officer points any of the issued defensive weapons at a citizen, the officer shall submit a Uniform Incident Report describing the incident. If there are no criminal charges associated with the show of force, the officer should assign the report as a non-criminal (NI) incident report as a "Show of Force". If there are criminal charges associated with the show of force, the report should be assigned as appropriate (CI).
- D. Anytime a defensive weapon is pointed at a citizen and no additional force is used, the primary reporting officer shall check "SHOWN" on the Use of Force box on the Uniform Incident Report form. Every officer involved in the show of force incident shall submit a narrative supplement describing their involvement in the incident and he/she will identify every person their defensive weapon was pointed toward. Any audio/video recordings of the show of force incident shall be submitted into evidence.
- E. The officer(s) who were involved in the show of force incident are not required to submit a separate Use of Force supplement form when the *only* action was the pointing of a defensive weapon. In the event officers show force then are forced to apply a level of force, the incident will be marked as a "FORCE/Used" incident on the Uniform Incident Report.
- F. Supervisors are not required to perform a Supervisor Use of Force Review for a show of force incident, unless upon review of the associated reports, there appears to be a violation of any portion of the Use of Force policy. Supervisors are authorized to conduct any follow-up procedure they deem necessary to reach a conclusion regarding the validity of the show of force. Supervisors shall report any possible violation of the Use of Force policy to their chain of command.

## **VII. LESS LETHAL FORCE**

- A. Police ASP Baton
  - 1. The Department issued ASP baton may be used if a suspect has escalated to using threatening statements and begins to close the distance on the officer or another person in a threatening manner as if to batter them.
  - 2. The ASP baton is not designed to be used as a club or bludgeon. Strikes should target areas of the body which may result in compliance by the suspect or allow the officer to gain control.
  - 3. Strikes to parts of the body (head, neck, spine, groin) capable of inflicting death or serious bodily injury shall be avoided unless justified by the guidelines of the Deadly Force section of this chapter.

B. Conducted Electrical Weapon

Conducted Electrical Weapon (CEW): A device designed to incapacitate a person from a safe distance while reducing the likelihood of serious injuries or death for the officer and the suspect. The CEW is a hand-held unit that can be used in two modes – Probe Deployment and/or Drive Stun.

1. Procedures

a. Authorized Users

Only officers who have satisfactorily completed this agency's approved training course shall be authorized to carry CEW's. Officers are required to attend training for the use of the CEW at least annually.

b. Weapon Readiness

1. The device will be carried in an approved holster on the side of the body opposite the service handgun in order to avoid weapon confusion. Officers not assigned to uniformed patrol may utilize other department approved holsters and carry the weapon consistent with department training.
2. The device shall be carried fully armed with the safety on in preparation for immediate use when authorized.
3. Only agency approved battery powered sources shall be used in the CEW.
4. No changes or modifications shall be made to the CEW or the cartridges. All repairs to the CEW or accessories shall be completed by a department authorized armorer.
5. Users are responsible for prompt reporting to supervisors of any damage to a CEW or its cartridges.
6. Prior to an officer commencing their shift, the officer will perform a spark test of the CEW as demonstrated in departmental training.

2. Use of the Conducted Electrical Weapon

The CEW in probe deployment mode provides a force option which aids officers in maintaining distance from perceived threats. The use of a CEW in either probe or drive stun mode may prevent officer and subject injuries caused by subject resistance or non-compliance.

The CEW may be used:

- a. When force is legally justified to prevent the reasonably foreseeable threat or

actual attempted assault, battery, and/or injury to officers, other person and/or the subject.

- b. On a subject who is non-cooperative and resists custody and control procedures.
- c. The use of a CEW is target-specific and should result in the officer's ability to gain control of the suspect.

3. Restrictions

The following factors, where apparent to involved officers, require elevated justification due to the risks of foreseeable direct or secondary injuries:

- a. Presence of flammable liquids/fumes or explosive environments
- b. Elevated positions
- c. Person operating machinery or a moving vehicle
- d. Pregnant female
- e. Swimming pool or other body of water
- f. Intentional CEW application to sensitive areas
- g. Frail or infirm individual
- h. Person running (fleeing apprehension)

4. Deployment of the CEW

- a. Upon discharging the CEW, the officer shall energize the subject for five seconds, as the CEW is programmed, and utilize the least number of cycles necessary to gain control of the suspect.
- b. The subject should be secured as soon as practical while disabled by the CEW to minimize the number of deployment cycles. In determining the need for additional energy cycles, officers should be aware that an energized subject may not be able to respond to commands during or immediately following exposure.
- c. The device may also be used in certain circumstances in a "drive stun" mode. This involves pressing the unit against an appropriate target area. It is important to note that when the device is used in this direct contact mode it is:
  - 1. Primarily a pain compliance tool.
  - 2. More likely to leave marks on the subject's skin.

5. Aftercare

- a. The CEW darts may be removed from the subject after the subject is restrained following procedures outlined in training.
- b. EMS will be called to complete a cursory check on each CEW exposure.
- c. The following persons shall be transported to a medical facility for examination following exposure to a CEW. Any person who:
  - 1. Is hit in a sensitive area (e.g. eyes, throat, neck, groin).
  - 2. Is in a potentially susceptible population category as defined previously.
  - 3. Has been subjected to a continuous energy cycle of 15 seconds or more, or
  - 4. Has exhibited signs of extreme uncontrolled agitation or hyperactivity prior to CEW exposure.
- d. The detention officers will monitor the suspect at 15 minute intervals for at least one hour to ensure there are no persistent affects such as vomiting, excessive burning, loss of control of breathing or any other adverse effect. If medical attention is required, the detention facility will notify the on-duty supervisor as well as the officer involved so that a supplemental report can be done detailing the medical attention received.

6. Reporting

- a. The deploying officer shall notify his supervisor as soon as practical after using the device, and complete the appropriate use of force report.
- b. Officers shall specifically articulate the rationale in their use of force report for any instance in which: an CEW is energized more that three times, an energy cycle longer than 15 seconds in duration is used, more than one CEW-is used against a subject in any given incident, or when a CEW is used against an individual designated as an “elevated risk factor” as described previously.
- c. Photographs of the affected area should be taken after the darts are removed.
- d. When the device has been used operationally, the officer shall collect the cartridge, wires, darts and AFID’s as evidence.

7. Accidental Cartridge Discharge

In the event of an accidental discharge of a CEW cartridge, the officer shall promptly notify the on-duty supervisor. The supervisor will reasonably investigate the incident and shall make appropriate notifications and/or take other appropriate actions. The supervisor shall have the officer prepare a written report of the incident.

C. OC Spray

OC Spray (pepper spray) plays a distinct and viable role in the continuum of force options and gives the individual officer an alternative to hard empty hand techniques, CEW and the use of an impact weapon, ASP.

1. Use of OC Spray

- a. The OC spray may be used on a suspect who is non-cooperative and resists custody and control procedures.
- b. The OC spray may be used if a suspect has escalated to using threatening statements and begins to close distance on the officer or another person in a manner as if to batter them.
- c. The use of OC spray is target specific and should result in the officer's ability to gain control of the suspect.
- d. The target area will consist of the face, specifically the eyes.

2. Decontamination

- a. Decontamination begins after the suspect has been restrained with handcuffs or by other means and the suspect's resistance has ceased.
- b. Decontamination should begin in a reasonable time frame and officer safety concerns should be taken into consideration.
- c. Expose suspect to fresh air and flush affected area with water.
- d. Call medical personnel (EMS) to perform a cursory check of the suspect, to remove any contact lenses if necessary and to continue flushing the suspect with water.
- e. Once the suspect has been transported to the city jail, have the suspect remove his clothes and shower.
- f. The detention officers will monitor the suspect at 15 minute intervals for at least one hour to ensure there are no persistent affects such as vomiting, excessive burning, loss of control of breathing or any other adverse effect. If medical attention is required, the detention facility will notify the on-duty supervisor as well as the officer involved so that a supplemental report can be done detailing the medical attention received.
- g. Under no circumstances will any creams, salves, or oils be applied to the affected area.

3. Reporting

- a. As with any use of force or application of force, a written report will be

submitted detailing the use of the OC spray, decontamination procedures and the events leading to the use of the OC spray.

**D. Bean Bag Munitions**

These munitions provide an officer's alternative to lethal force. Bean bag munitions are designed as a less lethal munitions to be employed against individually selected targets.

**1. Use of Bean Bag Munitions**

- a. Designated personnel will be required to complete certified training in the use of bean bag munitions. Designated personnel will be limited to Patrol Services Supervisors and specialty impact munitions instructor(s). S.W.A.T. team members who have completed training may be allowed to deploy bean bag munitions during a S.W.A.T. call out.
- b. Designated firearms will be clearly marked. They will be painted around the muzzle and butt of the firearm and will be placed separately from the units' primary firearm.
- c. Use of the munitions will follow the Reactive Control Model. Bean bag munitions may be used in various situations, as an option to lethal force, such as armed subjects, suicidal subjects, etc.

**2. Primary areas of concern**

- a. Capability of weapons possessed by suspect or crowd.
- b. Ability of munitions to resolve or suppress the situation safely and quickly.
- c. Officer(s) must have lethal force back up.

**3. Effective Use of Bean Bag Munitions**

- a. At a distance of less than ten (10) feet munitions should not be used if possible, due to the high possibility of a fatal outcome.
- b. At a distance of ten (10) to twenty (20) feet, attempt to avoid the head, neck, spleen, liver and kidney areas. At this distance the target area should be the subject's legs.
- c. At a distance of twenty (20) to forty (40) feet, the target area should be center mass.
- d. The maximum effective range of the munitions is fifty (50) feet.
- e. If the subject's threat level increases to the point that deadly force would be justified, the officer can target any area of the subject's body, regardless of the distance.



4. First Aid
  - a. First aid will be given in a reasonable time frame, once officer safety has been assured.
  - b. EMS will be directed to perform a cursory inspection of the subject to determine if medical treatment for the subject is required.
  - c. Once the subject is in the custody of the jail personnel, they will monitor the subject for any medical complications. Jail personnel will observe the subject for a minimum of once every hour, for the first six hours.
5. Reporting
  - a. As with any other Use of Force, a written report will be submitted detailing the incident and First Aid procedures taken. Officers should include number of munitions used, range to suspect, point of aim, point of impact, suspect's reaction, and observed injuries.
  - b. In the event impact munitions are deployed a detective will be called to process the scene and the Division Commander will be notified.

E. Other

Under emergency conditions, an officer can use whatever weapons are available.

**VIII. DISCHARGE OF FIREARMS**

- A. Officers may discharge a firearm under the following circumstances:
  1. To safely destroy an animal that represents a threat to public safety; as a humanitarian measure where the animal is seriously injured and other alternatives have been exhausted
  2. During range practice or competitive sporting events
  3. For ballistics and scientific testing
  4. In defense of a life
- B. Firing a weapon should be for the intent of rendering the person at whom the weapon is discharged incapable of continuing the activity prompting the officer to shoot.
- C. Warning shots are normally prohibited, however may be used if doing so would save the officer or another from death or great bodily harm.
- D. Firing a weapon at or from a moving vehicle should not be considered except as the ultimate measure of self-defense or defense of another when the suspect is using deadly force.

Firing at a moving vehicle with the intent of rendering it incapable of being operated poses a formidable danger to innocent parties. The possibility of ricochet is greatly increased when the

target is a car body or a spinning tire. Utmost caution must be exercised when considering such action.

- E. Firing at a fleeing person will not be considered justified unless the officer reasonably believes that the person he is considering shooting poses an imminent threat to human life.
- F. When an officer discharges a firearm accidentally or in the line of duty, except at firearms qualifications, his immediate supervisor will be notified as soon as possible, but never later than the conclusion of his tour-of-duty.
- G. When a duty firearm is discharged, on or off-duty, the officer shall file a written report of the incident through established channels to the Chief of Police. If an officer is unable to write the report, the duty supervisor will ensure the necessary report is properly prepared and forwarded.
- H. Division Captains shall review reports of discharge of firearms with the assistance of the Range Master in charge of firearms instruction. The Division Captain will investigate the facts and will submit a report of his findings and recommendations. A copy of the report will be forwarded to the Range Master in charge of firearms instruction.

**IX. DEADLY FORCE**

**A. Authorized Use of Deadly Force**

- 1. Deadly force may be used only when the officer reasonably believes that the action is in defense of human life, including the officer's own life, or in defense of any person in immediate danger of serious bodily injury.
- 2. An officer may use deadly force:  
  
When the suspect is intent on immediately endangering human life or immediately inflicting serious bodily injury unless apprehended without delay. The officer must reasonably believe that the suspect is armed or has the means to inflict death or serious bodily injury.
- 3. Prohibited uses of deadly force:
  - a. Officers shall not unreasonably or unnecessarily endanger themselves or the public in applying deadly force pursuant to this policy or state law.
  - b. An officer shall not rely solely on third party reports as a basis for use of Deadly Force, without firsthand knowledge of an alleged offense.
  - c. An officer shall not use deadly force in situations that would not be in accordance with New Mexico State Statutes.
  - d. In an attempt to apprehend fleeing felons or escapees whom are not placing the officer or another person in immediate danger of death or imminent serious bodily injury.
- 4. All officers shall be provided with and be familiar with all provisions of the New Mexico

State Statutes and this directive governing the legal use of Deadly Force.

**X. ADMINISTRATIVE DUTY**

- A. Immediately following an officer's involvement in an incident involving serious injury, death, or the discharge of a weapon other than while training, the officer will be automatically placed on administrative duty pending a review by the Chief of Police on the next normal work day. Unless the duty status is changed to a suspension status by the Chief of Police, the officer shall remain in an administrative duty status until such time as the matter is resolved legally and administratively.
- B. Assignment to administrative duty is non-disciplinary with no loss of pay or benefits. This duty is designed to:
  - 1. address the personal and emotional needs of the officer involved in the use of deadly force and,
  - 2. insure the community that the facts surrounding the case are fully and professionally investigated.
- C. An officer placed on administrative duty will be assigned to office duty in civilian clothes.
- D. The officer may be placed on administrative leave instead of administrative duty at the discretion of the Chief of Police. Assignment to administrative leave is non-disciplinary, with no loss of pay or benefits.
- E. An officer on administrative leave shall insure his/her availability to investigators until the investigation has been concluded.
- F. Officers on administrative duty or leave are authorized to carry an approved firearm, unless otherwise directed by the Chief of Police. Officers shall not work off-duty police related jobs and should not enforce laws and make arrests except in emergency situations.
- G. An officer whose action results in a deadly force incident will be required to counsel with the Department appointed counselor. The counselor must make written notification that the officer is fit for duty before that officer returns to duty.
- H. The Department will make available and reserve the right to require counseling for officers who had involvement in a deadly force incident.

**XI. INCIDENTS OF FORCE REVIEW**

- A. If a use of force or show of force reasonably indicates a possible violation of HPD policy or other inappropriate conduct, the immediate supervisor or any other supervisor will refer the matter directly to their chain of command.
- B. Referrals to the Office of Professional Standards will be automatic and take place immediately anytime there is a firearms discharge (except at the firing range or in the event of putting down an animal.).
- C. The Office of Professional Standards will be responsible for ensuring that all use of force data

from all reports are regularly and accurately compiled, analyzed and reviewed.

D. The Administrative Staff will:

1. Analyze use of force data on a quarterly, cumulative basis to detect trends;
2. Have compiled in writing and review use of force incident by officer and type of force used and,
3. Review this data for the purpose of identifying and acting upon their implications for policy and training designed to ensure that officers are using only appropriate types and amounts of force.

**XII. TRAINING**

- A. In order to provide members of this department with current information, the Defensive Tactics Coordinator will schedule periodic training sessions which enable officers to learn and exercise acceptable methods of defensive tactics. Officers may use defensive tactics that they have been trained in and are qualified to use. Annual training will be conducted to instruct officers in the Use of Force policy. This instruction will be documented. Defensive tactics training and Use of Force training will include an element of tactical communications as a de-escalation technique.
- B. Copies of this policy will be issued to each officer, before being authorized to carry a weapon, and will be updated as needed. This issuance and instruction will be documented.

**I. STATEMENT OF PURPOSE**

Investigations of fatal incidents involving police employees often place extraordinary demands upon the individuals and agencies involved. These cases tend to attract considerable interest from segments of the public and from the news media. The public's right to know what occurred may require balancing with investigative necessity, rights of privacy, or rights to a fair trial. Doubts may be expressed by some about the propriety of police agencies conducting investigations of fatalities which involved their own officers as actors or victims.

The individuals and agencies involved in such fatal incidents, as well as those involved in the subsequent investigations, must realize that each incident has potential social, civil, administrative, and criminal consequences. Incident investigators and agency managers must understand the legal right, obligations, and authority of the agencies and individuals involved. They must specifically recognize and reconcile police officers' constitutional rights against their rights and obligations resulting from the employer/agency relationship.

Confusion and even conflict can occur among individuals and agencies based upon their different interests, duties, perspectives, authority, training, and resources. Unless resolved in advance, questions such as who conducts the investigation, what type of investigation should be performed, and who can be present when a involved officer is interviewed, can delay and compromise investigations.

Because these demands and complications exist, this Protocol was adopted from the Contra Costa County Cal. DA's office for use in Lea County. The goal is to help assure that such cases are thoroughly and fairly investigated.

**II. DEFINITIONS**

**A. Officer-Involved Fatal Incidents/Incidents**

Incidents occurring in Lea County involving two or more people, in which a police agency employee is involved as an Actor, Victim or custodial officer, where a "Fatal Injury" occurs. Such "Incidents" include but are not limited to the following:

1. Intentional and accidental shootings, including police tactical incidents involving specialized response teams.
2. Intentional and accidental use of any other dangerous or deadly weapons.
3. Assaults upon police officers; assaults on other police employees who are on duty or are acting for a law enforcement purpose.
4. Attempts by police employees to make arrests or to otherwise gain physical control for a law enforcement purpose.
5. Physical altercations, mutual combat, and domestic violence in which the police employee is acting in a private citizen capacity.
6. Any fatal injury in police custody, but excluding fatal injuries of prisoners which occur while the inmate is under physician's treatment for a disease or other natural condition which has been diagnosed prior to death and which does not involve custodial trauma, custodial suicide or custodial ingestion of toxic substance.

7. Any fatal injury to a person who is a passenger of a police officer (such as ride-alongs, emergency transports, etc.)
8. Vehicular collisions, and specifically
  - a. including any vehicle fatality which occurs:
    1. after, although not necessarily as a proximate cause of, police gunfire directed at the suspect or the suspect vehicle
    2. in connection with use of vehicle(s) by police as an "enforcement intervention" technique intended to apprehend a suspect. ("Enforcement intervention" includes vehicle ramming, roadblocks, and forcing a vehicle to alter its course by cutting in front of it or by contact.)
  - b. excluding any vehicle fatality which involves:
    1. off-duty non-sworn police employees who are not at the time of the Incident acting for an actual, apparent or purported law enforcement purpose;
    2. solo vehicular collisions in which the only injury is suffered by a police employee who was the driver and sole occupant of a vehicle which was not involved in a collision with any other occupied vehicle;
    3. police pursuits wherein the suspect vehicle which is being pursued by police vehicle(s) collides with another vehicle, a pedestrian or an object, where that collision did not result from collision contact between the suspect vehicle and a police vehicle or from "enforcement intervention".

**B. Police Employee**

This Protocol applies to employees and to certain other people affiliated with the law enforcement agencies which are members of this Protocol agreement, as follows:

1. Full-time, part-time, and hourly sworn officers, whether on-duty or off-duty, and whether acting for a law enforcement or a private purpose at the time of the Incident;
2. Full-time unsworn employees who are on-duty at the time of the Incident, or who are acting actually, apparently or purportedly for a law enforcement purpose at the time of the Incident;
3. Part-time unsworn employees: same as # 2 above;
4. Reserve police officers who are on-duty or who are acting actually, apparently or purportedly for a law enforcement purpose at the time of the Incident;
5. Temporary employees and volunteers whether paid or unpaid, who are on-duty or who are acting actually, apparently or purportedly for a law enforcement purpose at the time of the Incident. This category includes Informants when they are working under the direct control and supervision of a police officer.

C. Actor

1. A person whose act is a "proximate cause" of a fatal injury to another person; or
2. A person who intends that his act be a "proximate cause" of serious bodily injury or death to another person who is actually killed by another.

D. Victim

The person who is injured by the act of the Actor, whether or not intentionally. When used in this Protocol, this word does not imply existence of criminality; it is used simply to designate the person who is physically injured.

E. Proximate Cause

A cause which, in a natural and continuous sequence, produces the fatal injury, without which cause the injury would not have occurred. Reasonable foreseeability of the fatal injury is not a factor relevant to this definition.

F. Fatal Injury

Death or injury which is so severe that death is likely to result.

G. Venue Agency

The agency, or agencies, within whose geographical jurisdiction the Incident occurs.

H. Employer Agency

The agency by whom the involved police employee is employed or with which he is affiliated. (In many cases the Venue Agency will also be the Employer Agency.)

I. Criminal Investigators

Those investigators assigned by the Venue Agency(cies), the Employer Agency(cies), and the District Attorney's Office to conduct the criminal investigation of the Incident.

J. Administrative Investigators

Those investigators assigned by the Employer Agency to conduct the Administrative Investigation of the Incident.

K. Member Agencies

The law enforcement agencies in Lea County which are members of this Protocol agreement.

**III. INVOCATION OF THIS PROTOCOL**

**A. Automatic and Immediate**

Upon the occurrence of an Officer-Involved Fatal Incident, this Protocol is automatically effective immediately upon the occurrence, unless Venue Agency elects not to invoke this protocol.

**B. Optional**

1. Each Member Agency of this agreement, when in the capacity of a Venue Agency or Employer Agency, may itself invoke this Protocol upon the occurrence of any sensitive or critical event involving a police employee which may have possible criminal liability attached. Upon this unilateral invocation, the matter will be investigated under the provisions of this Protocol.

**a. Examples:**

1. a fatality which is not covered by this Protocol
2. an officer-involved incident where the injuries are not fatal
3. any other sensitive or critical event involving a police employee where criminal conduct is a possibility to be investigated.

**b. The District Attorney has discretion to decline participation in optional invocations.**

2. In lieu of invoking this Protocol, the involved agency(cies) may, of course, investigate the matter by itself or may seek aid from other agencies.

**IV. INVESTIGATIVE AGENCIES, FORMATS AND RESPONSIBILITIES**

To properly recognize and accommodate the various interests and the various rules of law which may be involved in any Incident, investigations of these matters must be performed under two separate investigative formats: The Criminal Investigation; and The Administrative Investigation.

**A. The Criminal Investigation**

1. The Criminal Investigation has investigative priority over the Administrative Investigation and it begins immediately after an Incident has occurred.
2. It is performed by criminal investigators from the Venue Agency(cies), the Employer Agency(cies), and the District Attorney's Office formed into a Task Force for each Incident. The participating agencies are co-equal within the investigation, but the agency within whose geographical jurisdiction the Incident occurs has the ultimate authority to decide irreconcilable investigative issues.
3. Its goal is to develop all available relevant information about the Incident. This information will be used in two ways:
  - a. To determine presence or absence of criminal liability on the part of all those



involved in the Incident. Specifically:

1. To determine whether the nature and the quality of the conduct involved is prohibited by statutes which provide for criminal penalties upon conviction; and
  2. If criminal conduct does exist, determine the identity of the person(s) responsible for that conduct; and
  3. If criminal conduct does exist, determine the degree of the crime(s); the existence of any factual or legal defenses to that crime; and to determine the presence or absence of any factors which would mitigate or aggravate punishment for that crime.
- b. To incidentally provide factual information to the Employer Agency's management for its internal use.

(While the Criminal Investigators do not direct their investigative attention to Administrative concerns, it is recognized that the Criminal Investigation's results are of proper interest to Agency Management for its internal use and those results are fully available for that purpose.)

4. The investigation is required to follow the rules of law which apply to all criminal proceedings including constitutional, statutory and case law regarding rights which are covered by the United States Constitution's 4th, 5th, 6th, and 14th Amendments.
5. It is performed in a manner that provides both the appearance and the reality of a thorough, fair, complete and professional investigation which is free of conflicts of interest.
6. Within the Task Force, the Criminal Investigators will be divided into one or more teams (the number depending upon the complexity of the Incident and upon the number of people to be interviewed). Each team will consist of one criminal investigator from the Venue Agency(cies), the Employer Agency(cies), and from the District Attorney's Office. The Task Force investigation will be led by a primary team which is composed of the primary investigator from each of the Task Force agencies.
7. Venue Determination
  - a. When an Incident occurs in part of two or more jurisdictions, each of those jurisdictions is a Venue Agency.
  - b. When an Incident occurs on the boundary of two jurisdictions, or at a location where the relevant boundary is not readily ascertainable or is in dispute the Venue Agency(cies) shall be:
    1. the Employer Agency if the Actor is employed by either boundary agency
    2. both boundary agencies if Actors are employed by both
    3. the agency which has the greater interest in the case by virtue of having the

predominant police involvement in the Incident or by virtue of having had the majority of acts leading up to the fatality occur within its jurisdiction

- c. For custodial deaths, the agency having custody of the person at the time his distress was first discovered is a Venue Agency. Also a Venue Agency is the one within whose jurisdiction any fatal stroke was inflicted.
    - 1. If the death was caused by conduct which was apparently criminal, the lead Venue Agency is one within whose geographical jurisdiction the act occurred.
    - 2. If there is apparently no criminal conduct involved in the cause of death, the lead Venue Agency is the one having custody of the victim when distress was first discovered.
  - d. If an on duty police officer (sworn) is involved as the Actor in an Incident which occurs within the jurisdiction of another Member Agency, and if that officer was acting in the performance of his duty at the time of the Incident, the/a Venue Agency may elect to relinquish its role in the Criminal Investigation to the other Task Force agencies.
8. When a Venue or Employer Agency lacks sufficient resources, or when it believes it cannot properly investigate an Incident for another reason, it has two options:
- a. Obtain criminal investigative assistance from other Member Agency(cies). Borrowed officers would then be assigned to the Criminal Investigation Task Force as members of the requesting agency.
  - b. Relinquish criminal investigative responsibility to another Member Agency.
9. Vehicle collision Incidents
- a. Accidental collision fatalities shall be investigated by Task Force Criminal Investigators. The accident investigation specialists have the primary responsibility for documentation, collection and preservation of physical evidence.
  - b. If the fatality results from a collision that was not accidental (e.g. use of "enforcement intervention" techniques), OR if vehicle movement was merely incidental to a fatality which was caused by non-vehicular means, the accident investigation specialists may be used by the Task Force for that phase of the investigation, but their role will be limited to investigation of physical movement of the vehicle(s) and to collision reconstruction.
10. Scene security
- Each Agency has initial responsibility for immediately securing crime scene(s) within its territorial jurisdiction. This responsibility includes preservation of the integrity of the scene(s) and its/their contents, access control, and the identification and sequestration of witnesses. Responsibility may be changed by mutual agreement as the investigation progresses.

11. Responsibility for physical evidence collection, preservation and analysis
  - a. The Venue Agency has the responsibility for documentation of the scene(s) and for the collection, preservation and analysis of physical evidence except in some vehicular fatalities. The task force also has the option to ask the Department of Public Safety Laboratory for assistance if deemed necessary.
  - b. In unusual cases the Task Force agencies may all agree that the Laboratory need not be called to process the scene(s) and to collect evidence. The Laboratory shall be used if any Task Force agency desires.
  - c. If an employee of the Laboratory is involved in an Incident as an Actor or as a Victim, the Laboratory will be disqualified from participation in the investigation of the Incident. These alternatives are available:

Trained and experienced evidence collection officers from Member Agencies, who will have full responsibility for evidence work.
  - d. The Venue or Employer Agency(cies) may be requested by the Laboratory to furnish officers to assist with evidence and scene documentation, collection and preservation. Officers so involved will work under the direction of the Laboratory's criminalists.
  - e. Prior to final relinquishment of the scene, the Task Force investigators and the criminalists will provide the Administrative Investigators an opportunity to assess the need for further evidence processing.
12. Notifications

Upon identifying an occurrence as an Officer-Involved Fatal Incident, the Venue Agency(cies) shall make the following notifications as promptly as possible to:

  - a. Intra-departmental officers, as required by that agency's procedures.
  - b. The Employer Agency, if applicable and if not yet aware.
  - c. The District Attorney's on call attorney (directly by telephone, or through Dispatch).
  - d. The Venue agency's crime scene technician or the NMDPS crime lab.
  - e. The Medical Examiner, upon confirmation of a fatality. This is a required notification. (Body removal can be delayed as necessary for evidence processing.)
13. Scene Procedures (also see First Arriving Supervisor's Check List, Attachment A, in the back of this Protocol)
  - a. Emergency life saving measures have the first priority.
  - b. If a person is transported to a hospital with "fatal injuries" (see paragraph # 29 for definition), an officer should accompany that injured person in the same vehicle in order to:

1. Locate, preserve, safeguard and maintain the chain on physical evidence.
  2. Obtain a dying declaration; a spontaneous statement; a contemporaneous statement; a statement of then-existing or previous mental or physical state.
  3. Maintain custody of the person if he has been arrested.
  4. Provide information to medical personnel about the Incident as relevant to treatment, and obtain information from medical personnel relevant to the investigation.
  5. Identify relevant people, including witnesses and medical personnel.
  6. Be available for contacts with the victim's family, if appropriate.
- c. The scene(s) must be secured immediately with a perimeter established for each a sufficient distance away to safeguard evidence. In some circumstances an inner and an outer perimeter are appropriate.
1. Access to the scene(s) must be limited to only those officials who must enter for an investigative purpose.
  2. A written log will be established as quickly as possible to identify all persons entering the scene(s), the time of their entry and exit, and the reason for entry.
  3. When not needed for life savings efforts, entry by fire and ambulance personnel should be restricted to the absolute minimum necessary to perform the needed duties.
  4. No items shall be moved inside the scene(s) or removed from a scene without approval of the Task Force and the Criminalistics Laboratory unless absolutely necessary for public or officer safety or for preservation of evidence. If removal without approval is necessary, the removal must be witnessed and logged. The log shall state the identity of the person removing the described object, the reason for removal, a witness to the removal, and the time of removal. The item should be photographed prior to removal.
- d. If any type of weapon or instrument was involved in the fatal incident, the supervisor at the scene will promptly see to the security and/or collection of such items, as follows:
1. If the area is secure, loose weapons or instruments shall be left in place and undisturbed.
  2. If the area is not secure, the supervising officer at the scene shall decide whether the items can be safely left in place or whether prompt removal is necessary. If such items must be moved or removed for protection, they should be photographed in place prior to removal if possible.
  3. If an involved officer still has personal possession of a weapon he used in

the Incident, the supervising officer at the scene shall promptly but discretely (i.e. in private, out of view of the public and other officers if possible) obtain possession of the weapon. Sidearms must not be removed from their holsters; obtain the entire gunbelt if necessary to avoid removing the weapon from its holster. Sidearms should be replaced by the supervisor as quickly as possible if the officer so wishes, unless reason dictates otherwise.

4. In shooting cases, the supervising officer will check the firearms of all officers who were present at the time of the Incident to ensure that all discharged firearms are identified and collected, and to specifically document those weapons which were not fired.
5. The supervising officer collecting any weapon or instrument will make note of its readily visible general description and condition, the appearance and the location of any trace evidence adhering, to the extent these observations can be made without removing a firearm from its holster or otherwise compromising physical evidence. The location where the weapon or instrument was first observed by the supervising officer, and the identity of the person or location from which the weapon or instrument was received shall also be recorded.
  - a. In firearms cases, the supervising officer will also make note of whether the firearm is cocked, has its safety "on" or "off", has its hammer back, any apparent jamming of either fired or unfired ammunition; the location and position of the weapon's magazine (e.g. fully or partially inserted, completely separate from the firearm, missing, etc.), to the extent possible without removal of the weapon from its holster.
    1. If the mechanism of a firearm is obviously jammed, no attempt shall be made to unload the weapon or clear the jam.
    2. If the firearm is cocked (or if a semi-automatic pistol cannot be determined to be cocked or not), the safety may be put "on" by the supervising officer, who must make note of that fact. If the firearm's hammer is back, it may be lowered but note must be made of that fact.
  - b. Any officer receiving a weapon or instrument from another person or obtaining it otherwise shall note its serial number if readily visible without removing the weapon from its holster or otherwise compromising physical evidence and shall otherwise maintain the chain of evidence.
  - c. Otherwise, weapons and instruments will not be disturbed in any way. They shall not be handled by anyone other than the supervising officer and that officer shall handle them minimally to preserve the exact state of the weapon or instrument when received.
6. The collected weapons or instruments shall be transferred to the crime

scene technician upon their arrival.

7. If the supervising officer at the scene was himself an Actor or Victim in the Incident, the responsibility for security and/or collection of weapons and instruments shall rest with an uninvolved supervisor or the next-in-line uninvolved officer at the scene.
  8. Twelve rounds of the same type(s) of ammunition fired will be collected by the criminal investigators from each shooting officer (or from another appropriate source if the officer has insufficient similar rounds remaining).
  9. Firearms which do not need to be retained in evidence, as determined by the criminal investigators, will be returned to a designated representative of the Employer Agency promptly after the Criminalistics Laboratory has inspected and tested them. The Laboratory appreciates that prompt return of officers' handguns is important, and will return them as soon as possible.
- e. Any other physical evidence at the scene which is in danger of being contaminated, destroyed or removed must be promptly and effectively observed, recorded and then protected for subsequent collection. Evidence adhering to live participants (such as blood stains), footprints and fingerprints, volatile substances, various types of trace evidence, and firearms discharge evidence, are examples.
- f. Transporting and Sequestering of Involved Officers
1. Officers who were present at the scene at the time of the Incident, whether Actors or Witnesses, will be relieved of their duties at the scene as promptly as possible and shall be sent to their own police station unless other suitable and agreeable arrangements are made for them. Officer(s) not involved in the Incident shall be assigned to accompany these officers, either in a group or individually. Actors should be driven to the station by an uninvolved officer.
  2. If circumstances prohibit removal of all witnessing and involved officers from the scene at once, those officers who were Actors should be relieved first.
  3. An uninvolved officer shall remain with the involved officers, either in a group or individually, until they can be interviewed. The sequestering officers are present to ensure the officers have privacy, that their needs are accommodated, and to ensure the integrity of each officer's later statements to investigators. They should not be present during confidential (privileged) conversations.
  4. Involved officers are not to discuss the case among themselves, with sequestering officers, or with others except their representatives.
  5. While awaiting interviews, involved officers are encouraged to relax and to carefully reflect upon what occurred. They may wish to make notes for their future use, especially for later interviews.

g. Custodial Death scenes

When an Incident occurs in a jail facility or other location where inmates may have witnessed something, inmates should be identified and separated if possible pending interviews by criminal investigators.

14. Selection of Primary Investigators

Selection of the primary investigator(s) by the Task Force Agencies is of great importance. Generally, the best available investigator(s) should receive the assignment. These qualifications are important.

- a. Experience in homicide investigations (or vehicular collisions, if applicable). Investigation experience in other crimes against persons is helpful.
- b. Ability to effectively interview people of various backgrounds.
- c. Good working knowledge of physical evidence collection and preservation techniques, and an appreciation of the abilities and limitations of scientific evidence.
- d. Good knowledge of police operational procedures and the criminal justice system.
- e. Excellent report writing and communication skills.
- f. Good organizational and supervisory skills.
- g. Respected professionally by those with whom he/she works for being competent, thorough, objective, fair, and honest.

15. Interviewing Police Employees

a. Peace Officer's Employer-Employee Relations

- (1) This statute has limited application to many interviews conducted by Task Force interview teams:

- (a) \*\* The granting of administrative "use" immunity or administrative "transactional immunity" to an interviewee is a serious and often complicated step that must be considered carefully. Early in the investigation, sufficient facts about the employee's conduct may not yet be available to allow an informed and correct decision to be made. Further investigation may reveal that any type of contemplated immunity is not warranted. The desired immunized statement may not actually be necessary or independent alternative means may exist to obtain the information. Authority within the Employer Agency to grant administrative immunity may need to be defined. When immunity is given, it must be carefully and narrowly defined in writing or on audio tape and agreed to by all effected parties.
- b. If and when the interview becomes a custodial interrogation, the Miranda cases are applicable.
- c. To insure proof of voluntariness in a non-custodial interview, the Task Force

interviewers may wish to advise certain interviewees of the following:

1. The interviewee is not in custody and is free to leave at any time.
  2. The interviewee is not obligated to answer any questions asked by the investigators and no punitive action will be taken against the interviewee if he refuses to be interviewed by the Task Force Team.
  - d. Police employees have the same rights and privileges regarding Task Force interviews that any other citizen would have, including the right to consult with a representative prior to interview and the right to have the representative present during the interview.
    1. The representative should be allowed to consult about the facts of the incident privately with only one police employee at a time.
16. Intoxicant Testing
- a. Criminal Investigation

Police employees have the same rights and privileges that any civilian would have regarding intoxicant testing. When Task Force investigators determine that a police employee's state of sobriety is relevant to the investigation, they have these options:

    - 1 Obtain the blood and/or urine sample by valid consent.
    2. Obtain the blood and/or urine sample incidental to valid arrest.
    3. Obtain a search warrant.
    4. When applicable, utilize Vehicle Code section 66-8-107 for vehicular driving Incidents.
    5. If an arrestee refuses to comply with the request for a sample, attempts will be made to obtain the sample in accordance with case law.
  - b. Administrative Investigation
    1. Intoxicant test results obtained by Task Force Investigators are available to the Administrative Investigators.
    2. In the event the Task Force does not obtain samples for intoxicant testing, the Employer Agency may then seek to obtain samples. The Task Force investigators have the first opportunity however.
      - a. Authority for the Employer Agency to obtain samples includes (1) valid consent, and (2) ordering the employee to provide the samples based on the employment relationship.
      - b. Some departments have blanket orders regarding employee intoxicant testing while other departments make decisions on a case-by-case basis.



c. Miscellaneous

1. Blood is the best fluid for alcohol testing, while urine is best for drug screening. Optimally, samples of both should be obtained for most complete results.
2. Samples should be collected promptly after the Incident for most meaningful results.
3. A police employee may volunteer to provide sample(s) for intoxicant testing even if Task Force and Administrative Investigators haven't obtained samples. Similarly, a person from whom Task Force or Administrative Investigators have obtained samples may request that another sample be taken for independent testing. The taking of this sample and subsequent testing will not be at the expense of the Task Force or Employer. Such a request will be promptly honored.

17. Autopsy

- a. At least one member of the Task Force's primary investigative team will attend the autopsy. When possible, the investigator from the District Attorney's Office should attend the autopsy. Investigators representing other Task Force agencies may also attend.
- b. The autopsy pathologist will receive a complete briefing prior to the post mortem examination. This briefing, which includes all information known to that time which may be relevant to the cause, manner and means of death shall be attended by at least one member of the Task Force's primary team, and when possible the DA's investigator.
- c. For autopsies conducted in Lea County, and for autopsies conducted in other Counties where the pathologist agrees, the Medical Examiner's Office has the responsibility for documenting and collecting physical evidence. In vehicular collision deaths the Venue Agency's Accident Investigator Specialist or other accident investigation specialists have the responsibility with assistance if appropriate from the Laboratory
- d. Although the Medical Examiner has authority to determine who attends an autopsy, it is usually advisable to allow attendance by a licensed medical doctor or licensed private investigator, or by a recognized professional criminalist, who has been retained by representatives of the decedent.

18. The District Attorney's Office

- a. The District Attorney's Office has the following roles in Incident Investigations:
  1. Participate co-equally with the Venue and Employer Agency(cies) and (when applicable) in the Task Force performing the criminal investigation.
  2. Assist and advise the Task Force on various criminal law issues which may arise, such as Miranda, voluntariness, search and seizure, probable cause to arrest, detentions and releases, elements of crimes, immunity, legal defenses.

3. Upon completion of the Criminal Investigation, analyze the facts of the Incident as well as the relevant law to determine if criminal laws were broken. If so, prosecute as appropriate.
  - b. The District Attorney has his own separate investigative authority. When deemed appropriate by the District Attorney (or his designated alternate in his absence), the District Attorney's Office may perform an independent investigation separate from the Task Force.
19. Report writing
  - a. All Criminal Investigators will write reports documenting their participation in the investigation.
  - b. The Investigators within each Task Force team will allocate and divide among themselves the responsibility for documenting interviews and observations.
  - c. The lead Venue Agency has the ultimate responsibility for report writing and for collecting reports from other agencies.
  - d. Prompt completion and distribution of reports is essential. All involved agencies and investigators will strive for report completion and distribution within 30 days after the Incident.

**B. Administrative Investigation**

1. In addition to its concern about possible criminal law violations by civilians and its own employees who are involved in an Incident (which concerns are addressed by the Criminal Investigation), the Employer Agency also has need for information about the Incident for non-criminal purposes:
  - a. Internal Affairs:

Determination of whether or not its employees violated departmental regulations.
  - b. Agency Improvement:

Determination of the adequacy of its policies, procedures, programs, training, equipment, personnel programs and supervision.
  - c. Government and Community Relations:

Informing itself of the Incident's details so it may adequately inform its parent governmental body, and so it may be responsive to comments about the Incident from the public and the media.
  - d. Claims and Litigation:

Preparing for administrative claims and/or civil litigation that may be initiated by or against the agency.

2. The Employer Agency may use an Administrative Investigation and/or a more specific "civil litigation investigation" format to investigate these concerns as it considers appropriate. While both the Criminal Investigation and the Administrative Investigation are important and should be aggressively pursued, investigative conflicts between the two formats shall be resolved by allowing the Criminal Investigation to have investigative priority. It is intended that this prioritization will preclude competition between the two formats for access to witnesses, physical evidence, and the involved parties, and that it will prevent the Criminal Investigation from being compromised by an untimely exercise of the Employer Agency's administrative rights.
3. The initiation of Administrative Investigations and the extent of those investigations is, of course, solely the responsibility of the Employer Agency.
4. Interview statements, physical evidence, toxicology test results and investigative leads which are obtained by Administrative Investigators by ordering police employees to cooperate shall not be revealed to Criminal Investigators except when the District Attorney feels it is necessary. He will do this only after careful consideration about the consequences of such a decision. Other results of the Administrative Investigation may or may not be privileged from disclosure to others, including the Task Force investigators, depending upon applicable law.
5. The Employer Agency should immediately assign at least one Administrative Investigator upon being notified of the Incident. This officer can function as a liaison between the Employer and the Task Force, can gather information for the Agency, and can be the Task Force's contact for personnel matters, even if no actual investigation is then warranted by that officer.
6. The Task Force will promptly and periodically brief the Administrative Investigator(s) of the criminal investigation's progress. The Administrative Investigators will have access to briefings, the scene(s), physical evidence, and interviewees' statements.
7. Administrative Investigators are not bound by some of the same investigative restrictions that apply to Criminal Investigators.

**V. NEWS MEDIA RELATIONS**

- A. The interests of the public's right to know what occurred must be balanced with the requirements of the investigation and with the rights of involved individuals.
- B. As in all other cases, care must be taken to insure that intentionally misleading, erroneous or false statements are not made.
- C. Agencies and individuals who are not well informed and not intimately involved with the investigation's results and progress should not make statements to the press.
- D. While any agency cannot be prohibited from making statements to the news media about an Incident, these guidelines are established:
  1. The lead Venue Agency has the responsibility for making press releases about the Incident and its investigation.
    - a. Officers in close contact with the Task Force are in the best position to comment about the facts of the case and the progress of the investigation.

2. The Employer Agency.

If the Employer Agency is not also the Venue Agency, fewer problems will arise, especially at the early stages of the investigation, if the Employer Agency limits its comments to the following areas:

- a. The employer-employee relationship.
- b. Factual material revealed by the Employer Agency's own Administrative Investigation of the Incident.
- c. Information which has been cleared for release by the Task Force.

3. The New Mexico Department of Public Safety Crime Laboratory

Information released will usually be confined to general laboratory procedures, scientific facts and principles, and testing procedures. Specific results of searching, testing and analysis will generally not be released without clearance from an investigator from the Task Force's primary team.

4. The Medical Examiner's Office

Release of information will generally be limited to the following:

- a. Autopsy findings, including the condition of the deceased, the cause of death, and toxicology test results, after the involved agencies have received this information.
- b. The identity of those present at the autopsy, including the identity and affiliation of the pathologist(s).
- c. The general nature of further medical testing or medical investigation to be done.
- d. Information obtained by Medical Examiner's Investigators directly from medical sources, the deceased's family members, or witnesses. Information obtained from the Incident Investigators or from the involved agencies will not be released by the Medical Examiner's Office without prior clearance from those agencies.
- e. The role of the Medical Examiner's Office in the investigation of death, in general terms.

E. If Task Force Investigators determine that the release of a specific piece of information would materially jeopardize the investigation, they shall notify those agencies possessing that knowledge of the hazards of releasing it.

F. Interruptions to the Investigators will be minimized if the agencies assign particular individuals to be the sole designated contacts with the news media.

**VI. ACCESS TO REPORTS AND EVIDENCE**

A. Material which is created or collected by, or at the request or direction of, Task Force Criminal Investigators (including the NMDPS Crime Lab) will be made available in a timely manner to those agencies which have an interest in the investigation, including the Administrative Investigators.

- B. The material will include:
  - 1. Reports, written and collected.
  - 2. Access to physical evidence.
  - 3. Photograph, diagrams, and video tapes.
  - 4. Audio tape recordings.
- C. When the Task Force and/or District Attorney's Office concludes that the physical evidence collected by the Criminal Investigators is no longer needed for criminal law purposes, the Employer Agency shall be notified of that decision so it can assume responsibility for preservation of such evidence if it desires. It is then the responsibility of the employer agency to notify by letter, the officer(s) involved so that the officer(s) know the disposition of the evidence.